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R.G. Appellant/Claimant, v. C.H.D.S. Appellee/Employer.	Case No.: ES-P-08-109508

FINAL ORDER

I. INTRODUCTION

This is an appeal by Claimant R.G. of a Determination by a Claims Examiner served February 8, 2008, holding her ineligible for benefits. The appeal raises the issue whether Claimant voluntarily left her most recent work without good cause connected with her work, as specified in 7 District of Columbia Municipal Regulations ("DCMR") 311, and the District of Columbia Unemployment Compensation Act (D.C. Code, 2001 Ed. § 51-110(a)).

This administrative court issued a Scheduling Order and Notice of In-Person Hearing on February 20, 2008, scheduling the hearing for March 5, 2008, at 10:30 a.m. Claimant represented herself at the hearing. Appellee/Employer C.H.D.S. was represented by D. M., Esq. W.W., Business Manager, testified on behalf of Employer. No documents were admitted during the hearing; however, I relied on court records marked as exhibits 300 and 301 to determine jurisdiction.

II. FINDINGS OF FACT

1. The Claims Examiner's Determination was mailed to the parties on February 8, 2008.[1] Claimant was found ineligible and appealed this Determination on February 12, 2008.

2. Claimant started working for Employer on September 1, 2001. Claimant was a Bus Driver/Purchasing Assistant. Employer is a private school. Claimant worked and was paid until an undetermined date in August 2007; although Employer did not officially remove Claimant from its employment roles until September 30, 2007. Since Claimant began working for Employer, Claimant has worked pursuant to yearly employment contracts. Employer's employment contracts begin on July 1 each year and expire on June 30 the following year. The regular school year ends in mid-June of each year.

3. In the first week of June 2007, Claimant had a dispute with her supervisor, H.E. Ms. E. is Employer's Transportation Coordinator. Prior to renewing an employee's annual contract, Employer conducts reviews with each employee. Claimant's last review was during the first week of June 2007, but after the incident with Ms. E.. Claimant, Mr. W., Business Manager, and Ms. E. participated in the review. During the review, Employer's representatives told Claimant that they were inclined to terminate her employment as a result of the dispute she had had with Ms. E. earlier that week. Claimant indicated soon thereafter that she would rather quit than be fired.

4. Employer needed bus drivers for the summer school sessions, so it did not release Claimant when her contract expired on June 30, 2007. Employer did not renew Claimant's

[1] Nothing in the record below indicates any issue has been raised or preserved concerning factors under D.C. Code, 2001 Ed. § 51-109; e.g., base period eligibility, availability for work, etc.

contract on July 1, 2007. Claimant worked as a bus driver and purchasing assistant without a contract during July and some portion of August, 2007. During summer school, Claimant's supervisor was M.S. As Employer had threatened to fire Claimant and had not renewed her contract on July 1, 2007, Claimant felt her career with Employer was over. Claimant left her job at the completion of summer school and returned to "school."

III. CONCLUSIONS OF LAW AND DISCUSSION

In accordance with D.C. Code, 2001 Ed. § 51-111(b), any party may file an appeal from a Claims Examiner's Determination within ten calendar days after the mailing of the Determination to the party's last-known address or, in the absence of such mailing, within ten calendar days of actual delivery of the Determination. In this case, the Determination contains a certificate of service dated February 8, 2008. Claimant's appeal request was filed with this administrative court on February 12, 2008. The appeal was timely filed and jurisdiction is established. D.C. Code, 2001 Ed. § 51-111(b).

In this jurisdiction, generally any unemployed individual who meets certain statutory eligibility requirements is qualified to receive benefits. D.C. Code, 2001 Ed. § 51-109. The law, however, creates disqualification exceptions to the general rule of eligibility. The initial burden is on the employer to establish an exception for an employee who would otherwise be eligible for unemployment insurance benefits under D.C. Code, 2001 Ed. § 51-109; *i.e*., to show that the employee voluntarily left her work. 7 DCMR 311.3; *Green v. D.C. Dep't of Employment Servs*., 499 A.2d 870, 876 (D.C. 1985). Employees who have voluntarily left their employment are only eligible for benefits if they present sufficient evidence to support a finding that they left for good cause connected with the work. 7 DCMR 311.1, 311.5. *Cruz v. D.C. Dep't of Employment*

Servs., 633 A.2d 66, 70 (D.C. 1993). The test of "good cause connected with the work" is factual in nature and turns on what a "reasonable and prudent person in the labor market" would do under similar circumstances. *Cruz*, 633 A.2d at 69. In other words, I must assess "whether . . . an employee's departure was 'voluntary in fact, within the ordinary meaning of the word "voluntary."'" Cruz, 633 A.2d at 70 (D.C. 1993) (quoting 7 DCMR 311.2). The governing regulations enumerate specific examples of what does and does not constitute "good cause connected with the work." 7 DCMR 311.6, 311.7.

In defining "voluntary quit" and "good cause connected with the work," neither the statute (D.C. Code, 2001 Ed. § 51-110(a)), nor the pertinent regulations (7 DCMR 311) address a situation such as this; namely how a person's eligibility for benefits is impacted when she leaves a job after expiration of her employment contract. The District of Columbia Court of Appeals has not issued any decisions concerning this issue. However, the Appellate Court of Illinois, in reviewing a statute similar to local law, held as follows:

> The statute does not disqualify all workers who leave their employment voluntarily, but only those who do so without good cause attributable to the employer. This provision was intended to apply only to those situations where the decision of whether to continue working rests solely with the worker. Consequently, the statute deprives benefits to those claimants who have chosen to leave their employment of their own volition.

Chicago Transit Auth. v. Didrickson, 276 Ill. App. 3d 773, 778, 659 N.E.2d 28, 32; 1995 Ill. App. LEXIS 873 (1995). As noted by the Court of Appeals of Kansas, "[m]ost courts considering this question have ruled that, where a claimant had no realistic choice in determining the duration of employment, the claimant is eligible for unemployment benefits at the end of the limited-term employment because she is out of work through no fault of his or her own." *City of*

Lakin v. Kansas Sec. Bd. of Review, 19 Kan. App. 2d 188, 191, 865 P.2d 223; 1993 Kan. App. LEXIS 143 (1993).

Mr. W.'s testimony on crucial points was contradictory. Mr. W. stated that all employment contracts run from July 1 to June 30 the next year, and, because of this time line, employee reviews take place in June of each year. Mr. W. also testified that as of her June 2007, review, Claimant knew her termination was possible (if not imminent) given his concerns regarding the incident involving her supervisor. Claimant's termination potential was sufficiently high that Mr. W. acknowledged that in June 2007, Claimant could have reasonably presumed that Employer would not renew her contract at the end of the month. However, later in his testimony, Mr. W. testified that in August 2007, even though Claimant's contract had not been renewed and she reasonably could presume it would not be renewed, Claimant was still similarly situated with other employees. Mr. W.'s point was that in August 2007, even though Claimant did not have a contract, Claimant had no more reason than any other employee to believe that her continued employment was in question. Mr. W.'s testimony that on the one hand all contracts are renewed by June 30 each year and on the other hand that Employer did not have a contract with Claimant well into August leads me to two conclusions. Employer's practice is to renew all employment contracts by July 1 and that as of August 2007, if not sooner, both Employer and Claimant knew Claimant was not in the same situation as all other employees and that her continued employment was doubtful.

Additionally, from the record as a whole, I conclude that Employer allowed Claimant to continue working during July and August, 2007, only because it required her services for the summer session. Mr. W. tried to create the impression that Claimant's continued service was an indication that Employer had not decided whether to renew her contract. I do not credit this

testimony. My conclusion is supported by, among other things, the fact that Employer: i) had very little time, after the June 2007, incident, to replace Claimant before start of the summer semester; ii) as of the date of Claimant's departure, Employer had failed to renew her contract; and iii) as of the date of Claimant's departure Employer had not met again with Claimant to discuss her status and potential for future employment. This reality was obvious to Claimant and, therefore, provided her no realistic expectation that her job would be extended into the upcoming school term.

Employer argued that Claimant is ineligible because when Claimant quit, she said she was returning to school. 7 DCMR 311.6(f). However, Claimant quit only after her contract had expired and she had "no realistic choice in determining the duration of [her] employment. . . ." *City of Lakin*, 19 Kan. App. 2d at 191. The fact that Claimant prepared for her future under these circumstances is a sign of maturity, not volition. Employer either manufactured this situation by intentionally putting Claimant into a position of powerlessness (she was threatened with termination, her contract was not renewed, she had no basis to conclude she would remain employed, and there was nothing she could do about it), or it took advantage of Claimant. Under these circumstances, Employer has not proven by a preponderance of evidence that Claimant voluntarily quit her employment. The Claims Examiner's Determination is reversed. Claimant is eligible for unemployment benefits.

IV. ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this 11th day of March 2008

ORDERED that the Claims Examiner's Determination that Appellant/Claimant R.G. is ineligible for benefits is **REVERSED;** it is further

ORDERED that Appellant/Claimant R.G. is **ELIGIBLE** for unemployment compensation benefits; it is further

ORDERED that the appeal rights of any person aggrieved by this Order are stated below.

March 11, 2008

/SS/
Jesse P. Goode
Administrative Law Judge